



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss

**COMMISSION ADJUDICATORY
DOCKET NO. 06-0024**

**IN THE MATTER
OF
EDWARD HIGGINS, JR.**

DISPOSITION AGREEMENT

This Disposition Agreement is entered into between the State Ethics Commission and Edward Higgins, Jr., pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in Superior Court, pursuant to G.L. c. 268B, §4(j).

On April 13, 2006, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Higgins. The Commission concluded its inquiry and, on October 11, 2006, found reasonable cause to believe that Higgins violated G.L. c. 268A, §§19 and 23(b)(3).

The Commission and Higgins now agree to the following findings of fact and conclusions of law:

Findings of Fact

1. In 2003, Higgins was appointed acting chief and then permanent chief of the Lynn Fire Department ("LFD"). As such, Higgins was, at all relevant times, a municipal employee as that term is defined in G.L. c. 268A, §1(g).

2. Prior to Higgins's appointment to chief in 2003, he began living with his girlfriend, Deborah Darsney. He continued living with her after his appointment to chief.

3. Darsney began working for the LFD in 1993 as principal bookkeeper. In 1994, she was promoted to system accountant, the position she held when Higgins was appointed acting chief in 2003. As system accountant, her duties included payroll and some budgetary responsibilities, as well as some Information Technology ("IT") duties.

4. Shortly after being appointed chief in 2003, and in response to the demand to dramatically decrease his department's budget, Higgins laid off 36 firefighters, all of the 911 call takers and a clerk who worked for the EMT's office. Higgins also reorganized the department's administrative office staff. As part of that reorganization, Higgins assigned Darsney additional duties involving payroll, budgetary issues, accounts payable, and additional ("IT") responsibilities. Another member of the administrative staff assumed duties in the Fire Prevention Division.

5. In June 2005, after meetings with the Personnel Director, Higgins promoted Darsney to Network Systems Assistant Coordinator, raising her salary from \$677 per week to \$832 per week.

Darsney's job duties remained the same as those she had held since the 2003 office reorganization. The other staff member with Fire Prevention was also formally promoted and received a salary increase.

6. Subsequent to the 2003 office reorganization, Darsney reported to Higgins as her direct supervisor on items involving disputes with the union and contract negotiations. She was directly supervised by the office administrative assistant for other duties, although Higgins did at times participate in her assigning and approving Darsney's overtime. There is no evidence that Darsney received undue favoritism in the assignment or approval of overtime.

7. At the time she was promoted in 2005, Darsney held a Bachelor's Degree, was a Certified Microsoft Systems Engineer, had training and certifications in database programming using Microsoft Access and Microsoft Excel, and had accounting experience. She was the only administrative staff member to hold all of these qualifications.

8. In November 2005, Higgins and Darsney married.

9. Shortly thereafter, upon learning about potential conflict issues that arise from supervising an immediate family member, Higgins disclosed in writing to the personnel director that he had married Darsney. He also informed the director that he assigned all personnel matters and supervision of Darsney to the deputy chief.

10. That day, Higgins delegated supervision of Darsney to the LFD deputy chief.

11. Thereafter, the LFD deputy chief approved Darsney's requests for time off; however, Higgins continued to daily supervise Darsney as well as approve her overtime requests. Between December 2005 and on or about March 6, 2006, Higgins approved five overtime vouchers for Darsney, totaling \$2600. There is no evidence that Higgins provided Darsney with undue preference in assigning or approving overtime.

12. When advised that his letter to the personnel director did not satisfy the conflict statute, Higgins sought approval from the mayor to participate in matters affecting his wife's financial interest in two separate letters to the mayor. On March 9, 2006, after receiving assistance from the city solicitor, Higgins sent a letter to the Mayor. On March 20, 2006, Lynn Mayor Edward Clancy, Jr. approved a §19(b)(1) exemption^{1/} for Higgins to participate in matters affecting Darsney's financial interest.

13. Mayor Clancy was aware that Higgins had a personal relationship with Darsney at the time he appointed Higgins to be chief in 2003. He was also aware that Higgins and Darsney worked closely on budgetary matters both before and after their marriage.

Conclusions of Law

Section 23(b)(3)

14. Section 23(b)(3) of G.L. c. 268A in relevant part prohibits a municipal official from, knowingly or with reason to know, acting in a manner which would cause a reasonable person, knowing all of the relevant facts, to conclude that anyone can improperly influence or unduly enjoy that person's favor in the performance of his official duties. This section further provides that it shall

be unreasonable to so conclude if the municipal official has disclosed in writing to his appointing authority the facts which would otherwise lead to such a conclusion.

15. By promoting, supervising, and approving overtime for Darsney, a person with whom he was living, Higgins knowingly or with reason to know acted in a manner which would cause a reasonable person with knowledge of the relevant facts to conclude that Darsney could unduly enjoy Higgins's favor in the performance of his official duties.

16. Accordingly, Higgins violated §23(b)(3) of the conflict of interest law by promoting, supervising, and approving overtime for a person with whom he was living.

Section 19

17. Section 19 of G.L. c. 268A prohibits a municipal employee from participating^{2/} as such an employee in a particular matter^{3/} in which, to his knowledge, he has a financial interest.^{4/}

18. Approving an employee's overtime is a particular matter.

19. Between December 2005 and on or about March 6, 2006, Higgins approved five requests for overtime for his wife. He therefore participated in each of these particular matters.

20. As his wife, Deborah was an immediate family member as that term is defined by the conflict law.

21. These overtime requests totaled \$2600. Thus, Deborah had a financial interest in the overtime approvals.

22. Therefore, between December 2005 and on or about March 6, 2006, Higgins violated §19 on each of these five occasions where he approved Deborah's overtime, particular matters in which he knew she had a financial interest.

23. Additionally, although he appears to have been trying to comply with the conflict law, by delegating Deborah's supervision to the deputy chief, Higgins violated §19. Day-to-day supervision involves an on-going determination as to the acceptability of an employee's performance. This determination is a particular matter. By delegating this supervision, Higgins participated in the particular matter. A public official is prohibited not only from himself deciding personnel matters affecting his family members, but also from delegating that authority to a subordinate.^{5/}

24. Further, although he delegated supervision to the deputy chief, Higgins remained Deborah's day-to-day supervisor after they married. Active, day-to-day supervision constitutes personal and substantial participation.

25. By supervising his wife on a daily basis, Higgins participated in matters germane to her continued employment and/or personnel performance review. As such, he participated in particular matters in which he knew she had a financial interest.

26. Therefore, between December 2005 and March 20, 2006, Higgins violated §19 by supervising his wife on a daily basis.

27. Although Higgins made a written disclosure to the personnel office that he married Darsney, the conflict of interest law required that this disclosure be made to his appointing authority, Lynn Mayor Edward Clancy, Jr. Additionally, consistent with the requirements of §19(b)(1), Higgins was prohibited from participating in any supervisory action, including delegating such supervision, until such time as his appointing authority provided him a written determination that he could do so.

28. Higgins cooperated with the Commission in its investigation.

Resolution

In view of the foregoing violation of G.L. c. 268A by Higgins, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Higgins:

- (1) that Higgins pay to the Commission the sum of \$3,000.00 as a civil penalty for violating G.L. c. 268A, §§23(b)(3) and 19;
- (2) that Higgins waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: December 18, 2006

¹ Section 19(b)(1) provides, in relevant part, that it shall not be a violation of §19 if a municipal employee first advises his appointing authority of the nature and circumstances of the particular matter in which an immediate family member has a financial interest, and receives in advance a written determination by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee.

² "Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, § 1(j).

³ "Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, § 1(k).

⁴ "Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. *EC-COI-84-96*.

⁵ Higgins's appointing authority could have so delegated Deborah's supervision.